

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Glen H. Handlogten et al.  
Serial No. : 10/676,153  
Filed : September 30, 2003  
For : HIERARCHICAL SCHEDULING  
Examiner : Henry Baron  
Group Art Unit : 2616  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated on the attached sheets.

Respectfully Submitted,

Dated: April 16, 2009



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**ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In the Final Office Action (dated October 21, 2008), claims 1 and 3-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2004/0081167 by Hassan-Ali et al. [hereinafter *Hassan-Ali I*] in view of U.S. Patent No. 7,020,161 to Eberle et al. [hereinafter *Eberle*]. Claims 7-10 and 12-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hassan-Ali I* in view of *Eberle* and in further view of U.S. Patent Application No. 2004/0081157 to Hassan-Ali et al. [hereinafter *Hassan-Ali II*]. The rejection of independent claims 1, 7, 10, and 18 are illustrative as to how the rejections are clearly not proper and are without basis.

**A. THE CLAIM REJECTION UNDER 35 U.S.C. § 103 OF CLAIMS 1 AND 3-6 IS CLEARLY NOT PROPER AND IS CLEARLY WITHOUT BASIS AS THE CITED REFERENCES DO NOT DISCLOSE TRANSMITTING DATA FROM THE SELECTED PIPE FLOW USING A BANDWIDTH CORRESPONDING TO THE WINNING PIPE FLOW**

"When determining whether a claim is obvious, an examiner must make 'a searching comparison of the claimed invention - *including all its limitations* - with the teaching of the prior art.'" *In re Wada and Murphy*, Appeal 2007-3733 (BPAI 2008) (citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995)). "Thus, 'obviousness requires a suggestion of all limitations in a claim.'" *Id.* (citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)) (emphasis added)).

Independent claim 1 recites, inter alia  
transmitting data from the selected pipe flow  
using a bandwidth corresponding to the winning  
pipe flow.

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Specifically, it is maintained that the secondary citation to *Eberle* fails to remedy the conceded deficiency in the primary citation to *Hassan-Ali I*. Accordingly, without conceding its propriety, the proposed combination of *Hassan-Ali I* and *Eberle* is likewise deficient, even in view of the knowledge

of one of ordinary skill in the art. Accordingly, a prima facie case of obviousness has not been established.

The Office Action concedes that the primary citation to *Hassan-Ali I* does not teach transmitting data from the selected pipe flow using a bandwidth corresponding to the winning pipe flow. *Final Office Action*, page 4. Nonetheless, the *Office Action* rejects independent claim 1, contending that the secondary citation to *Eberle* provides this necessary disclosure. *Office Action*, page 4. This contention is respectfully traversed.

*Eberle* relates to scheduling and allocation of resources in an electronic system. *Eberle*, col. 1, lines 29-32. *Eberle* states that

[a] precalculated schedule can accommodate isochronous traffic by allocating the necessary connection between an input and output port at intervals derived from the rate of the isochronous data stream. That way, an appropriate amount of switch bandwidth can be reserved.

The Office Action fails to establish that "isochronous traffic" equates to the expressly recited winning pipe flow. Moreover, Applicants respectfully submit that "isochronous traffic" does not equate to a winning pipe flow. In fact, Dictionary.com defines "isochronous" in terms appearing in contrast to a winning pipe flow: "2. Characterized by occurring at equal intervals of time." *Webster's Revised Unabridged Dictionary*. MICRA, Inc. <http://dictionary.reference.com/browse/isochronous> (accessed: January 06, 2009). Accordingly, Applicants respectfully maintain that the cited portion of *Eberle* cannot properly be relied upon for disclosing a winning pipe flow, much less transmitting data from a selected pipe flow using bandwidth corresponding to the winning pipe flow, as expressly recited in independent claim 1.

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 are respectfully requested.

**B. THE CLAIM REJECTION UNDER 35 U.S.C. § 103 OF CLAIMS 7-10 AND 12-21 IS CLEARLY NOT PROPER AND IS CLEARLY WITHOUT BASIS AS THE CITED**

**REFERENCE DOES NOT DISCLOSE, FOR EXAMPLE, WRITING DATA REGARDING A  
PIPE FLOW TO A SECOND CALENDAR**

Independent claims 7, 10, and 18 recite, respectively:  
writing data regarding the pipe flow to a second  
calendar;

a secondary calendar for storing pipe flows that  
are scheduled to be serviced; and

write data regarding the pipe flow to the second  
calendar[.]

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Specifically, it is maintained that the tertiary citation to *Hassan-Ali II* fails to remedy the conceded deficiency of the citations to *Hassan-Ali I* and *Eberle*. Accordingly, without conceding its propriety, the proposed combination of *Hassan-Ali I*, *Eberle*, and *Hassan-Ali II* is likewise deficient, even in view of the knowledge of one of ordinary skill in the art. Accordingly, a prima facie case of obviousness has not been established.

As discussed at page 9 of the Amendment/Response After Final, the Office Action concedes that the primary and secondary citations fail to disclose the above feature. Nonetheless, the Office Action rejects independent claims 7, 10, and 18 contending that the tertiary citation to *Hassan-Ali II* provides this necessary disclosure. *Office Action*, page 6.

*Hassan-Ali II* relates to "a calendar heap system and method for efficiently sorting time stamps used in an Asynchronous Transfer Mode (ATM) scheduling environment." *Hassan-Ali II*, para. 3.

*Hassan-Ali II* does not appear to even mention a second calendar, much less writing data regarding a pipe flow to a second calendar, or a secondary calendar for storing pipe flows that are scheduled to be serviced.

Applicants respectfully submit that the hybrid calendar heap scheme 500 does not equate to a second calendar. Rather, the hybrid calendar heap scheme 500 appears to be the calendar heap. Thus,

assuming arguendo that the calendar heap scheme 500 is a calendar, it is at best, a first calendar (i.e., not a second calendar).

Moreover, Applicants respectfully submit that the Office Action fails to establish that the second layer of the calendar somehow equates to a second calendar. Instead, Applicants again note that the hybrid calendar heap scheme 500 appears to be **the** calendar heap. Simply showing multiple layers is not in itself sufficient.

Applicants respectfully submit that the rejection is clearly not proper and is without basis. Accordingly, favorable reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 are respectfully requested.

**C. CONCLUSION**

For at least the reasons herein, Applicants respectfully submit that the rejections are clearly not proper, are without basis, and should be withdrawn. Further, Applicants respectfully request that the Office issue a finding that the application is allowed on the existing claims and that prosecution remains closed.

Respectfully Submitted,

Dated: April 16, 2009

A handwritten signature in black ink, appearing to read 'Christopher Paul Mitchell', with a stylized flourish at the end.

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